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VIA HAND DELIVERY

Magalie Roman Salas

Secretary

Federal Communications Commission

445 12th Street, S.W., TW-A325

Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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*** NY BAR ONLY

Re: Comments of OpenBand of Virginia, LLC
WT Docket No. 99-217

Dear Ms. Salas,

Enclosed for filing in the above-referenced proceeding please find an original and four (4) copies of the Comments of OpenBand of Virginia, LLC. Also included are individual copies of the filing for Qualex International, the Office of Media Relations, and Leon Jackler of the Wireless Telecommunications Bureau.

If you have any questions regarding this filing, please contact me. Thank you.

Sincerely,

Richard Davis

Richard Davis

Enclosures

cc: Qualex International (Room CY-B402)
Office of Media Relations (Room CY-A257)
Leon Jackler (Room 4-B445)

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List A B C D E

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)
)
Promotion of Competitive Networks)
in Local Telecommunications Markets)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY
WT Docket No. 99-217

**COMMENTS OF
OPENBAND OF VIRGINIA, LLC**

OpenBand of Virginia, LLC ("OpenBand") submits the following comments in response to the Public Notice issued in the above-captioned docket on November 30, 2001.¹

I. Introduction

OpenBand is a wholly owned subsidiary of M.C.Dean, Inc.² and licensed, facilities-based telecommunications carrier in the Mid-Atlantic region. OpenBand essentially offers to consumers "one stop shopping" broadband communications solutions. In short, OpenBand designs, engineers, constructs, and then utilizes state-of-the-art, broadband networks to provide consumers bundled and converged communications solutions that include high-speed data, voice, video, converged network, consulting, and OSS services.

In the past, OpenBand's service offerings have been tailored and provided primarily to business and government customers. In the past year, however, OpenBand has been able to extend its network engineering expertise and bundled, broadband service offerings to residential consumers. In particular, OpenBand now teams with land developers and builders to design and build "smart neighborhoods" or "wired communities." To date, OpenBand has invested over

¹ Wireless Telecommunications Bureau Requests Comments On Current State of The Market For Local And Advanced Telecommunications Services In Multitenant Environments, Public Notice, DA 01-2751 (November 30, 2001) ("Public Notice").

² M.C. Dean, Inc. is a mid-atlantic company with over 50 years of experience in systems design, integration, construction, and life cycle support.

\$15 million in residential broadband facilities at these communities, with over \$25 million more on the immediate horizon.

Drawing from the design and engineering expertise of its parent company, OpenBand provides to new residential communities custom designed communications infrastructure, including, among other things, community-wide fiber-optic backbones, fiber-to-the-home connectivity, and a community-dedicated central office housing state-of-the-art voice, video, and data equipment. Through these facilities, OpenBand is able to provide every community resident a complete, pre-wired package of communications service options, including, but not limited to, local and long distance telephone, analog and digital cable television, high-speed, always-on Internet connectivity, digital home security, web-based home automation, and even a community intranet. Moreover, these services come with the convenience and efficiency of a single, monthly bill and a single provider with a demonstrated commitment to cutting-edge technology and service quality. Most importantly of all, OpenBand is today making in its communities a reality what for some 90% of residential America is still a pipe dream: true, high speed broadband connectivity. And, OpenBand's version of broadband is provided over sophisticated secure network architectures at a 100 mbps level, offering truly high speed access to the kind of content that real broadband promises, such as video streaming and video on demand.

II. Comments

The Public Notice asks for information on the current state of the market for local and advanced telecommunications services in multitenant environments ("MTEs"). In response, OpenBand submits that the MTE market involves many of the same issues and considerations as OpenBand faces in serving wired communities. One of these shared issues is the deployment of broadband facilities and services to residential consumers.

The importance of encouraging broadband deployment is clearly not a matter of dispute at the Commission. In the past few months alone, the Commission has initiated a number of dockets to address the issue. Moreover, Chairman Powell, himself, recently confirmed that “the Commission’s central policymaking focus is and should remain the promotion of efficient broadband deployment.”³ The purpose of OpenBand’s comments is to bring this central focus to this proceeding.

Balanced solutions to issues such as exclusivity and access are required in order for regulatory policy to foster and facilitate the wired community area. Having been in the midst of some of the most prominent wired community activities over the past few years, OpenBand appreciates the importance of these issues. Unfortunately, it does not perceive that the Commission has heretofore obtained input from wired community advocates. The pending docket may be a sensible first step toward sensitizing the Commission to such issues and facilitating a productive policy dialogue in this area.

Through its service offerings to wired communities, OpenBand believes that it has found a competitive, effective, and vital model for the future growth and availability of residential broadband, bundled, and converged services. In the past few years, most business initiatives for the competitive deployment of ubiquitous or unsolicited residential broadband networks have proven to be either unworkable or not even worth considering. Many of these ventures have been structured as a “field of dreams,” in that the provider has made a significant investment in the infrastructure to serve a large area and then thereafter sought customers to fill up and utilize the network. Many such providers have died waiting. In the wake of these failures, however, community-based and community-targeted deployments by competitive providers are

³ Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, Separate Statement of Chairman Michael Powell, CC Docket No. 98-146 (Feb. 7, 2002).

flourishing, making competitive, innovative, and otherwise unavailable broadband facilities, services, and platforms of services available to thousands of residential consumers. Through aggregating demand at a property and building top-quality high speed networks focused specifically to serve that demand, these providers in essence offer a “flip” of the field of dreams: by the time the last mile of fiber is deployed in the ground, a customer base, and corresponding revenue stream, is available to repay the capital expense and offer an investment return. A key part of the success of community-based broadband deployment is the opportunity for competitive providers, like OpenBand, to recover the substantial initial investment required to deploy broadband networks. Through community-based arrangements, competitive providers are better able to justify an otherwise prohibitive initial investment in broadband facilities and equipment by obtaining some assurance of a steady revenue stream from an established and localized customer base.

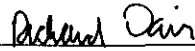
As the Commission is aware, the market is ripe with opportunities for the deployment of broadband facilities and services. The RBOCs have vocally demonstrated, in initiatives like the currently proposed Tauzin-Dingell bill, that the incentive to pursue and invest in broadband deployment opportunities must be preserved by some reasonable assurance of recovering the required facilities investment. This is not to say that OpenBand agrees that Tauzin-Dingell or other RBOC initiatives to relax or eliminate regulatory requirements and safeguards are appropriate in any way. Indeed, OpenBand believes that the unique position of market power and bottleneck control of essential interconnection and related facilities held by the RBOCs, which completely distinguishes them from their competitors, warrants no relaxation of the pro-competitive restrictions and obligations that they now face. Notwithstanding, the central concept of preserving economic incentive for broadband deployment holds true.

OpenBand has found that in the current market, competitive providers, developers, and builders are ready and able to extend broadband capability to residential consumers through sophisticated and dynamic wired community arrangements. Indeed, this is true even though competitive providers are at an inherent economic disadvantage to incumbent providers who, by virtue of already possessing an extensive revenue-generating customer base and largely ubiquitous and fully amortized networks, face significantly reduced cost and other financial pressures. Notwithstanding, issues such as access and exclusivity need to be addressed with an eye toward catalyzing and preserving this ready and able competitive market. A planned community, as the “customer,” generally makes a careful choice in selecting a communications provider. That provider, in turn, makes a substantial commitment of resources to meet the customer’s needs, including the provision of true broadband services. A knee-jerk rule requiring access to all comers to such new communities and networks would diminish the incentive and ability to build such networks and run afoul of the Constitutional right to compensation for takings. Where a developer or other property owner has carefully provided for the significant investment to provide meaningful broadband services to a community, has chosen a company to provide those services, and fully discloses to homeowners the nature of the arrangement in the community, such arrangements need to be thoughtfully considered as options to facilitate wired community models.

In this and other proceedings, OpenBand encourages the Commission to adopt and promote measures that will preserve and encourage these arrangements and the incentive for competitive deployment of broadband facilities and services to residential consumers. OpenBand looks forward to the opportunity to follow up these comments with the Commission,

including a review by the Commission of some of the innovative wired communities in the Washington DC area.

Respectfully submitted,



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